Supreme Court, U.S.
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NO. 05-63

IN THE
Supreme Court of the United States

STEPHANIE S. ACTON, Petitioner,

v.

CITY OF EATON, OHIO, et al., Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION

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and Dr. Lori L. Marcellino

QUESTIONS PRESENTED FOR REVIEW

The Petitioner sets forth an eleven (11) page narrative devoid of any articulable issue presented for this Court's review. The following question more appropriately frames the issue which relates to Respondents Lori Marcellino, Psy.D. ("Dr. Marcellino") and Samaritan Behavioral Health, Inc. ("Samaritan"): Whether the Sixth Circuit Court of Appeals properly affirmed the District Court's award of summary judgment in favor of Dr. Marcellino and Samaritan on the grounds that Ms. Acton's claims were barred by the applicable two year Statute of Limitations?

PARTIES TO THE PROCEEDING

The petition accurately lists the parties to this proceeding.

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STATEMENT OF THE CASE

A. Procedural Posture

Contrary to the contention of the Petitioner, Ms. Acton, this action does not involve a county-wide conspiracy to deprive Ms. Acton of her constitutional rights. Rather, it involves the failure of the Petitioner to timely file her claims within the applicable statute of limitations.

On or about April 4, 2003, Ms. Acton filed her Complaint against Dr. Marcellino and Samaritan and twenty other individuals and entities. (Complaint). In her Complaint, Ms. Acton made several allegations against Dr. Marcellino for her limited role in Ms. Acton's involuntary commitment at Twin Valley Psychiatric in Dayton, Ohio. Id at ¶ 30. These allegations implicated state law claims of battery, involuntary imprisonment, professional malpractice, slander and constitutional claims in violation of 42 U.S.C. §1983. Additionally, she alleged that Samaritan, by and through its agent, Dr. Marcellino, participated in a conspiracy to create a false perception of mental incompetence in order to deprive her of her constitutional rights in violation of 42 U.S.C. §1983. Id at ¶¶ 135-39.

Dr. Marcellino and Samaritan filed their Motion for Summary Judgment on September 22, 2003 asserting that all of Ms. Acton's claims were barred by the statute of limitations. Other defendants filed similar motions. Ms. Acton filed a Motion in Opposition to Summary Judgment in which she asserted that the statute of limitations was tolled during her period of confinement pursuant to Ohio Rev. Code §2305.16. In its Decision and Order, dated November 28, 2003, the District Court granted the Defendants their various motions to dismiss or motions for summary judgment. Ms. Acton filed a

timely appeal and on December 7, 2004, the Court of Appeals for the Sixth Circuit affirmed the District Court's Decision that Ms. Acton's claims were barred by the statute of limitations. On February 4, 2005 the Appellate Court also denied Petitioner's Motion for a Re-Hearing. Ms. Acton filed her original Petition for Writ of Certiorari with this Court on May 4, 2005.

B. Statement of Facts

The pertinent facts for purposes of this Petition are that Ms. Acton alleged that she contracted an illness and completed a worker's compensation form supplied by her employer which indicated that her illness was work related. (Complaint at ¶22). Thereafter, Ms. Acton's employer allegedly coerced her to change the form to indicate that her illness was not work related. Id. at ¶¶120-127. Under the apparent impression that she had committed insurance fraud, Ms. Acton contacted the Prosecuting Attorney for Preble County, Ohio as well as the Eaton City Mayor in an attempt to instigate a criminal prosecution against herself and her employer. Id. at ¶¶9, 128. Ms. Acton then met with City of Eaton Mayor Pat Taylor in which she sought to expose alleged fraud and corruption that supposedly pervaded the entire civil authority structure of the City of Eaton and Preble County. Id.

Subsequently, Ms. Acton was visited by employees of Samaritan who, in accordance with its contract with the State of Ohio, performed an initial mental health evaluation. Id at ¶24. On or about March 13, 2001, Dr. Marcellino completed an affidavit stating that Ms. Acton satisfied the mental health standard for an immediate temporary involuntary commitment. Id at ¶136. She was thereafter temporarily confined to Twin Valley Psychiatric at which she was evaluated and found to be of sound mind.

C. Reasons for Denying the Petition

The Petition sets forth no reason which justifies the issuance of a Writ of Certiorari and presents no constitutional question for this Court's review. Supreme Court Rule 10 states:

> [a] Petition for Writ of Certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

It is clear that the Petitioner is seeking a review of the Sixth Circuit's application of a properly stated rule of law.

This Court has held that a state's personal injury statute of limitations should be applied to all 42 U.S.C. §1983 claims. Wilson v. Garcia, 471 U.S. 261 (1985). Additionally, the tolling provisions for all 42 U.S.C. §1983 claims are to be determined in accordance with the appropriate state statutes. Hardin v. Straub, 490 U.S. 536 (1983). Pursuant to Ohio Rev. Code §2305.10, the statute of limitations for personal injury actions within the state of Ohio is two years. Thus, the statute of limitations for civil rights actions filed in Ohio under 42 U.S.C. §1983 is two years. Browning v. Pendleton, 869 F. 2d 989, 992 (6th Cir. 1989) (en banc). In reference to Ms. Acton's possible state law claims, the applicable statute of limitations for slander and false imprisonment is one year. Ohio Rev. Code § 2305.11. Similarly, the statute of limitations for battery is also one year. Id. The applicable statute of limitations for general personal injury actions, which includes professional malpractice claims against mental health workers, is two years. Ohio Rev. Code § 2305.10.

The time of accrual of such actions is when the plaintiff knows or has reason to know of the injury which is the basis for the action. Hill v. Sciarotta, 140 F. 3d 220 (6th Cir. 1998). At the latest, the time of accrual in the case at bar is when Ms. Acton was detained on March 13, 2001. Therefore, Ms. Acton's Complaint filed on April 4, 2003 is time barred. All of Ms. Acton's potential state law claims are time barred since every potential claim was subject to a statute of limitations of two years or less.

None of Ms. Acton's claims were tolled pursuant Ohio Rev. Code § 2305.16. That statute provides for the tolling of a statute of limitations if the person entitled to bring the action is confined in an institution while being of "unsound mind." Ohio Rev. Code § 2306.16. That tolling provision may only be claimed by a party if that person is, in fact, of unsound mind. Fisher v. Ohio University, 63 Ohio St. 3d 484 (1992). An involuntary commitment will not, by itself, establish that a person was of unsound mind. Ms. Acton failed to present any evidence that she was of unsound mind. In fact, Ms. Acton's entire case revolves around her claim that she was committed in retaliation for her exercise of first amendment rights when she was not, in fact, incompetent. These two claims are irreconcilable. If Ms. Acton was mentally incompetent at the time of her detainment, then her underlying claim for wrongful involuntary commitment would be rendered moot.

D. Conclusion

This case presents no federal constitutional issue for this Court's consideration. The District Court and The Court of Appeals for the Sixth Circuit were correct in concluding that Ms. Acton's claims were time barred and that her involuntary confinement did not toll the statute of limitations since she was not of unsound mind. Ms. Acton seeks to overturn the District

Court's and Court of Appeals' correct application of a properly stated rule of law. Accordingly, the Petitioner's Writ of Certiorari should be denied.

Respectfully submitted,

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